

**GROUP OF GOVERNMENTAL EXPERTS OF  
THE STATES PARTIES TO THE CONVENTION  
ON PROHIBITIONS OR RESTRICTIONS ON  
THE USE OF CERTAIN CONVENTIONAL  
WEAPONS WHICH MAY BE DEEMED TO BE  
EXCESSIVELY INJURIOUS OR TO  
HAVE INDISCRIMINATE EFFECTS**

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Item 7 of the agenda

Working Group on Explosive Remnants of War

**Proposal for the structuring of IHL/ERW discussions during  
CCW experts' meetings in 2004**

submitted by Sweden

Relevant principles of existing International Humanitarian Law and their application in relation to different types of munitions, including cluster munitions

1. As confirmed by its mandate, the CCW Meeting of States Parties has agreed to consider the implementation of the International Humanitarian Law (IHL) applicable to weapons giving rise to explosive remnants of war, including submunitions.
2. Such an examination is necessary because, as has been highlighted in reports from recent conflicts the use of cluster bomb and other submunitions has had a serious impact on civilian populations.<sup>1</sup> The reports raise important questions on the extent to which existing IHL is being adequately implemented and is effective in minimizing the dangers of specific weapons, especially when they are used in populated areas.
3. It is essential that there be a focused and substantial discussion on the implementation of the IHL principles applicable to the use of all kinds of munitions, including submunitions. The primary IHL principles are identified below. To facilitate the discussion for upcoming meetings, experts are encouraged to prepare answers (i.e. short papers) to answer the following questions. Practical examples would also help illustrate the issues.

General questions

4. For what situations and against what types of targets are submunitions intended to be used?
5. At the planning (strategic) level, what factors (military and humanitarian) are considered in deciding to use submunitions?

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<sup>1</sup> See for instance HRW World Report 2004 "Human Rights and Armed Conflict", chapter on "Cluster Munitions: Toward a Global Solution", by Steven Goose, and HRW "Off Target? The Conduct of War and Civilian Casualties in Iraq", 2003; "Explosive Remnants of War: Landmines and Cluster bombs in Kosovo", ICRC, 2000.

6. Are the same considerations also used in relation to other conventional weapons?
7. How do these factors influence the choice of weapons to be used in a military operation?
8. What factors (military and humanitarian) are considered at the operational and/or tactical level in deciding to use submunitions against a particular target? What alternatives to submunitions are available?

IHL principles and related questions

9. **Distinction:** The parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives. Operations shall only be directed against military objectives. The civilian population, individual civilians and civilian objects shall not be made the objective of an attack.
  10. How is the principle of distinction applied in the use of submunitions, particularly cluster bombs, which are often dropped from a high altitude?
  11. **Proportionality:** Attacks are prohibited if they may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
  12. What factors (military and humanitarian) are taken into account when assessing the principle of proportionality in the military planning process of an attack using certain munitions, i.e. submunitions?
  13. To what extent are the long-term effects of ERW regarded as “foreseeable” and taken into account in determining an attack's compliance with the principle of proportionality?
  14. **Precautions in attack:** Parties must take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injuries to civilians and damage to civilian objects.
  15. What feasible precautions can be taken to ensure that civilian casualties are minimized during an attack using submunitions?
  16. Do these precautions involve measures to protect civilians after the use of submunitions, in particular to minimize the dangers from unexploded submunitions?
  17. Are there feasible precautions directed at the particular characteristics of submunitions (i.e. wide dispersal, free falling, affected by weather and atmospheric conditions and nature of the terrain when used)?
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